

EXHIBIT E26

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 COUNTY OF ALAMEDA
3 BEFORE THE HONORABLE BRAD SELIGMAN
4 DEPARTMENT 23
5 ---000---
6 TERESA ELIZABETH LEAVITT
7 and DEAN J. MCELROY,
8 Plaintiffs, No. RG17882401
9 vs.
10 JOHNSON & JOHNSON, et
11 al.,
12 Defendants.
13 _____/

13 REPORTER'S TRANSCRIPT OF TRIAL
14 (WILLIAM E. LONGO, Ph.D.)
15 Thursday, February 14, 2019
16 Full Session

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18
19 Taken before EARLY K. LANGLEY
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21 CSR No. 3537

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<div>6</div> <div> <div>1 E Exhibit 17, Notebook - The 163</div> <div>52312 Analysis of Johnson &</div> <div>2 Johnson's Historical Baby</div> <div>3 Powder and Shower to Shower</div> <div>4 Products, 1960s to early</div> <div>1990s for amphibole</div> <div>4 asbestos, W. Longo</div> <div>deposition 11/27/18 Leavitt</div> <div>5</div> <div>E5236 Ex. 6, November 1, 2018 167</div> <div>6 report entitled "Analysis</div> <div>of Dr. J. Abraham's Lung</div> <div>7 Tissue Digests from Teresa</div> <div>Leavitt's Lung Tissue Using</div> <div>8 FE-SEM and EDXA, deposition</div> <div>of W. Longo</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>	<div>8</div> <div> <div>1 DX Summary report, Exposure to 109</div> <div>12136 Asbestos-Containing</div> <div>2 Vermiculite from Libby,</div> <div>3 Montana, at 28 Processing</div> <div>4 Sites in the U.S.,</div> <div>10/29/2008. ATSDR</div> <div>5</div> <div>DX MAS Analysis Report Project 150</div> <div>5 11227 #14-1683, Johnson's Baby</div> <div>Powder Sample Set 4/28/17</div> <div>6</div> <div>DX Dr. Longo reports, March, 153</div> <div>7 12212 August, November</div> <div>8</div> <div>DX TEM analysis, bulk analysis 178</div> <div>12193 of Kaiser Gypsum joint</div> <div>9 compound by MAS</div> <div>10</div> <div>DX Publication, "Asbestos 212</div> <div>12151 Fibers in Ambient Air of</div> <div>11 California, Jack C.</div> <div>Murchio, W. Clark Cooper,</div> <div>12 Arturo DeLeon, 3/1/73</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>
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2 P R O C E E D I N G S

3 --o0o--

4 Thursday, February 14, 2019 - 8:47 a.m.

5 (Morning Session)

6 (Whereupon, the following proceedings were held

7 outside the presence of the jury:)

8 THE COURT: Folks. Folks.

9 And, Dr. Longo, can I ask you to step outside,

10 please.

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Let me first start

13 with --

14 Is the door shut?

15 There was the Longo issue dealing with the

16 chrysotile. And I need a little help here. I have

17 just reviewed deposition testimony. To back up, the

18 issue at trial is whether we can talk about any

19 particular documents dealing with chrysotile; right?

20 MR. ASHBY: Right.

21 THE COURT: That's as to Johnson & Johnson.

22 And I do see the deposition. There was his statement

23 that he would go back and see if he could find any

24 documents and if he was wrong about J&J internal

25 documents, he'd withdraw it. And the agreement on

12

1 page 481 he was going to look for those documents. And

2 I see that the deposition was reconvened later. It

3 doesn't appear to me, unless I'm misreading it, that

4 the documents produced at the reconvened deposition had

5 to do with chrysotile.

6 MR. MAIMON: They did not. And the agreement

7 at the end of the deposition of November 27th,

8 Your Honor, did not deal with those documents. What

9 happened is --

10 THE COURT: Let me make sure I know which --

11 November 27th. That's the -- that's the agreement.

12 MR. MAIMON: What happened is on page 370 and

13 onward, which counsel for J&J according to the Court

14 to --

15 THE COURT: Yes.

16 MR. MAIMON: There was discussion about

17 chrysotile documents. At the conclusion or at the end

18 of the deposition, an agreement was reached between

19 counsel with regard to two specific documents, none

20 having anything to do with chrysotile. They had to do

21 with the -- as indicated on pages 480 and then 481,

22 Mr. Ashby at the bottom: "Okay. All right then.

23 Mr. Maimon and I talked about off the record the fact

24 that will be produced in the coming days" -- "that what

25 will be produced in the coming days is the Lee Poye

13

1 report related to the 75 samples that were analyzed

2 under XRD and PLM." That's one document. As well as

3 Dr. Longo was going to endeavor to find documents that

4 were supporting his opinions about exposure data that

5 we had discussed at the previous deposition. That was

6 on the first day of the deposition. I indicated that

7 we'll produce those, and to the extent there was a need

8 felt by counsel for the defendants we would schedule a

9 follow-up deposition.

10 That follow-up deposition was scheduled and did

11 take place on December 5, 2018, and, as indicated on

12 page 490, the indication was made that we had produced

13 the documents that were agreed to.

14 And so, while we had a disagreement earlier in

15 the deposition about the chrysotile documents and

16 whether or not Johnson & Johnson had many opportunities

17 to cross-examine Dr. Longo about them and we

18 resolved -- I mean, we agreed to disagree at that point

19 in the deposition.

20 At the end of the deposition on November 27th,

21 Your Honor, there was an explicit agreement between

22 counsel about -- about specific documents that would be

23 produced and a follow-up deposition that would be held

24 on it. And no time subsequent to that did Johnson &

25 Johnson follow up and say, oh, what about the

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1 look at this, in only one of these grid openings, did
 2 all of the analysts agree on what they saw as being a
 3 fiber; true?
 4 **A. That's what it states, yes.**
 12:25:18 5 MR. ASHBY: Okay. You don't have to do that,
 6 John.
 7 BY MR. ASHBY:
 8 **Q.** So -- so out of these -- and there's one, two,
 9 three, four, five, six, seven, eight -- out of these
 12:25:30 10 nine, where all of the analysts saw a structure, just
 11 one out of nine times did they all say that that
 12 structure was a fiber; right? That's what the report
 13 states?
 14 **A. That's what the -- that's what your chart**
 12:25:42 15 **states, yes.**
 16 MR. ASHBY: All right. You can take that down
 17 now.
 18 BY MR. ASHBY:
 19 **Q.** So Dr. Longo, you would agree with me that in
 12:25:56 20 science, you often have to pay attention to details to
 21 know what's true and what's not true; correct?
 22 **A. It's always good to pay attention to details,**
 23 **yes.**
 24 **Q.** And you would agree with me that it's very
 12:26:05 25 important to be accurate when you're accusing somebody

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1 of selling baby powder with asbestos in it?
 2 MR. MAIMON: Objection, Your Honor.
 3 THE COURT: Sustained.
 4 BY MR. ASHBY:
 12:26:16 5 **Q.** All right. Well, let's talk about your
 6 April 2017 preliminary report you gave to that lawyer.
 7 That's Tab B1. And if we turn to page 29 --
 8 MR. ASHBY: John, can you put up --
 9 We are going to put up the photo on page 29.
 12:26:50 10 No objection?
 11 MR. MAIMON: No.
 12 BY MR. ASHBY:
 13 **Q.** -- this -- this is your April 2017 preliminary
 14 analysis; true?
 12:26:59 15 **A. True.**
 16 **Q.** And the caption down here has labeled this,
 17 "TEM Image of a Tremolite Fiber in Sample M66352-002."
 18 Right?
 19 **A. That's the title on that header, yes.**
 12:27:15 20 **Q.** Okay. Well, it says "tremolite fiber"; does it
 21 not? Yes or no?
 22 **A. It does say "tremolite fiber." It's a bundle,**
 23 **but it says "fiber."**
 24 MR. ASHBY: Okay. Move to strike, Your Honor.
 12:27:27 25 THE COURT: Strike the bundle.

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1 Just answer the question, please.
 2 THE WITNESS: Yes, sir.
 3 THE COURT: No volunteering additional.
 4 BY MR. ASHBY:
 12:27:34 5 **Q.** All right. And let's move to Tab B2,
 6 Plaintiffs' Exhibit E514 at page 492.
 7 MR. MAIMON: 492?
 8 MR. ASHBY: Yeah.
 9 MR. MAIMON: What tab?
 12:27:55 10 MR. ASHBY: Tab B2. Do you have it? I have it
 11 in mine.
 12 BY MR. ASHBY:
 13 **Q.** Do you have it in yours, Dr. Longo, page 492?
 14 **A. No.**
 12:28:16 15 **Q.** -- B2?
 16 MR. MAIMON: I don't feel short-changed.
 17 MR. ASHBY: There you go (handing).
 18 THE WITNESS: I don't know if I am looking at
 19 the right thing. I've got pages going up to
 12:28:31 20 30-something.
 21 BY MR. ASHBY:
 22 **Q.** So this is Tab B2, which is your August -- now
 23 we're at the -- we are not looking at the April 2017
 24 anymore. We are looking at the August 2017. And this
 12:28:49 25 is B2. I can give you my copy.

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1 **A. Oh, 492?**
 2 **Q.** Page 492.
 3 **A. Yeah, I've got it.**
 4 **Q.** All right.
 12:29:00 5 MR. ASHBY: John, could you put that up.
 6 BY MR. ASHBY:
 7 **Q.** So now we are looking at that same sample,
 8 M66352-002; right?
 9 **A. Yes.**
 12:29:12 10 **Q.** And we're looking at Structure Number 1; right?
 11 **A. That's correct.**
 12 **Q.** I've highlighted Structure Number 1. Structure
 13 Number 1 is the same one that we saw in April of 2017
 14 that was written down as a tremolite fiber; right?
 12:29:31 15 **A. Yes, on -- but not on the count sheet from that**
 16 **time frame.**
 17 **Q.** Well, we -- you remember, in April 2017, there
 18 was no -- there were no backup data that was provided
 19 with that report; right?
 12:29:44 20 **A. That's right. It was a preliminary report.**
 21 **But the backup data, what the analyst called that**
 22 **originally never changed.**
 23 **Q.** Well, I -- okay. So you say.
 24 But what we looked at here is, by April -- by
 12:29:58 25 August of 2017, we see that, in fact, that structure

<p style="text-align: center;">150</p> <p>1 that was in the April 2017 report as a fiber is now a</p> <p>2 bundle; right?</p> <p>3 A. No.</p> <p>4 MR. MAIMON: Objection.</p> <p>12:30:09 5 THE WITNESS: Look at the top there on the</p> <p>6 right. See the "Date of analysis, 4/25/2017"? The</p> <p>7 original data on the count sheet that the analyst saw</p> <p>8 has never changed. Was there a typo on the preliminary</p> <p>9 draft report? Absolutely.</p> <p>10 (Whereupon, Defendant's Exhibit DX11227 was</p> <p>11 marked for identification.)</p> <p>12 BY MR. ASHBY:</p> <p>13 Q. Okay. Let's look at another one. Let's go</p> <p>14 back to Tab B1, DX11227. This is page 28.</p> <p>12:30:43 15 A. Hold on. Let me get there.</p> <p>16 Q. So this is going to be another one of those</p> <p>17 mistakes; right?</p> <p>18 MR. MAIMON: Objection, Your Honor.</p> <p>19 THE COURT: Overruled -- sustained.</p> <p>12:30:56 20 BY MR. ASHBY:</p> <p>21 Q. We see that TEM image of a tremolite fiber. It</p> <p>22 states "fiber"; right?</p> <p>23 A. It does state "fiber" on the typed-in stuff on</p> <p>24 the report, that's correct.</p> <p>12:31:08 25 Q. And this is the April 2017 report; right?</p>	<p style="text-align: center;">152</p> <p>1 Q. Is that a bundle or a fiber?</p> <p>2 A. For me sitting here and looking at the</p> <p>3 two-dimensional photograph, it would be hard for me to</p> <p>4 say. But I wouldn't call one like this a fiber or a</p> <p>12:32:56 5 bundle unless I were sitting at the microscope.</p> <p>6 Q. Well, let's see what the analyst called it. If</p> <p>7 we go to page 182, if we look at Structure 12, it</p> <p>8 started as a fiber but was changed to a bundle; true?</p> <p>9 A. That's true.</p> <p>12:33:25 10 Q. All right. But we can do a comparison between</p> <p>11 what was called bundles from these reports and what</p> <p>12 were called bundles for these reports by comparing</p> <p>13 pictures; can we not?</p> <p>14 A. Comparing pictures?</p> <p>12:33:34 15 Q. Yeah.</p> <p>16 A. A lot of these -- yes. A lot of these bundles</p> <p>17 are very obvious. It's -- the ones that are -- you</p> <p>18 have to have and look at it at a higher magnification</p> <p>19 and go through, you really need to be sitting at the</p> <p>12:33:48 20 microscope. And we accept the -- the analyst who was</p> <p>21 doing that at that particular time.</p> <p>22 Q. All right. And -- now back in March and August</p> <p>23 of 2017 and April of 2017 -- or March 2018 and these</p> <p>24 2017 reports, you called 53 percent of the structures</p> <p>12:34:13 25 that you saw bundles in the eBay and collector bottles;</p>
<p style="text-align: center;">151</p> <p>1 A. Correct.</p> <p>2 Q. And you know if we go and look at the</p> <p>3 August 2017 report, that that same fiber will be called</p> <p>4 a bundle; right?</p> <p>12:31:20 5 A. Correct. But if you, again, look at the count</p> <p>6 sheet, top left-hand corner, 4/3/2017 to 4/6/2017 --</p> <p>7 the microscopist who was analyzing this put down what</p> <p>8 that structure is, a bundle. That has never changed.</p> <p>9 And, again, the preliminary report was a draft,</p> <p>12:31:40 10 and that's why it was fixed when we got done with the</p> <p>11 draft report.</p> <p>12 Q. All right. Now let's look at Tab B8. And this</p> <p>13 is Plaintiffs' Exhibit E521. And if we turn to</p> <p>14 page 182 --</p> <p>12:32:09 15 MR. ASHBY: Actually, John, why don't you start</p> <p>16 with page 219.</p> <p>17 THE COURT: What page did you say?</p> <p>18 MR. ASHBY: 219.</p> <p>19 THE WITNESS: Oh, 219.</p> <p>20 (Whereupon, Plaintiff's Exhibit E521 was marked</p> <p>21 for identification.)</p> <p>22 BY MR. ASHBY:</p> <p>23 Q. All right. So what we are looking at here is</p> <p>24 Structure 12 from Sample 65D; correct?</p> <p>12:32:28 25 A. Correct.</p>	<p style="text-align: center;">153</p> <p>1 is that true?</p> <p>2 A. That I don't know.</p> <p>3 Q. Maybe I can quickly refresh your recollection</p> <p>4 with your own testimony. If you turn to Tab 25?</p> <p>12:34:29 5 A. I'm at Tab 25.</p> <p>6 Q. So page 3,673?</p> <p>7 A. 3,673. Line 4 to line 10.</p> <p>8 Q. Tab 25; right?</p> <p>9 A. You're right. I'm sorry. I thought it was a</p> <p>12:35:34 10 little lower.</p> <p>11 Q. Okay. All right. So we can agree now that</p> <p>12 53 percent of what you saw back here for the March 2018</p> <p>13 and before data it was 53 percent bundles; right?</p> <p>14 A. Yes, sir.</p> <p>12:35:48 15 Q. By November 2018, this data, you had 93 percent</p> <p>16 bundles?</p> <p>17 A. That's correct.</p> <p>18 Q. So it's an increase of 40 percent; true?</p> <p>19 A. That's true.</p> <p>12:36:27 20 Q. All right. I'm going to hand you --</p> <p>21 MR. ASHBY: Do we have an exhibit number? I'll</p> <p>22 mark these as Exhibit DX12212.</p> <p>23 (Whereupon, Defendant's Exhibit DX12212 was</p> <p>24 marked for identification.)</p> <p>12:36:44 25 BY MR. ASHBY:</p>

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1 Q. Can you take a look at those and tell me if
2 that looks like data from your August reports and your
3 November reports?

4 A. I'm sorry, for what reports?

12:37:07 5 Q. The one on the left would be the March report.
6 You can tell by the date of the picture. And the one
7 on the right would be the November report, because you
8 can tell by the date of the picture.

9 A. That's correct.

12:37:24 10 Q. Okay.

11 MR. ASHBY: Permission to publish?

12 MR. MAIMON: No objection.

13 THE COURT: You may.

14 BY MR. ASHBY:

12:37:35 15 Q. So here on the left we see a structure that was
16 called a fiber; right? We're looking at Structure 4
17 from this sample. M65205-001 is the sample.
18 Structure 4, which is this one down here; right?

19 A. That's correct.

12:37:55 20 Q. So that was a fiber. This structure here is
21 from November 2018. It's Structure 52D, Structure 4.
22 And that one was called a bundle; right?

23 A. Yes, sir.

24 Q. Here again -- this is in 2017. This structure
12:38:26 25 here is M65205-001, Structure 7.

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1 That was labeled a fiber in 2017; right?

2 A. Yes, sir, it is.

3 Q. And then this structure here in 2018 is
4 M69248-003-004.

12:38:53 5 And that's a bundle; right?

6 A. Yes, sir, it is. At two completely different
7 magnifications.

8 Q. Okay. That's a fiber, that's a bundle; right?

9 A. Yes, sir. I agree with that.

12:39:07 10 Q. All right.

11 MR. ASHBY: The next one, John.

12 BY MR. ASHBY:

13 Q. Again, you'll agree with me that this is a
14 photo from 2017 taken at the MAS Lab, on the left?

12:39:22 15 A. Correct.

16 Q. That's labeled a fiber in 2017; right?

17 A. That's what it is.

18 Q. 2018, you would agree with me the one on the
19 right is a 2018 photo taken at the MAS Lab?

12:39:35 20 A. It is.

21 Q. And that was labeled a bundle; correct?

22 A. Yes, sir.

23 Q. You had shown some pictures, PLM pictures.

24 Those are the colored ones with the pink on them and it
12:39:54 25 had the -- what you called the bundles in them.

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1 Do you remember that?

2 A. There's the pink, there's the dark field,
3 there's regular cross polar, so there's a number of
4 them there.

12:40:06 5 Q. It's just -- I think it's easier for everybody
6 to remember seeing the pink ones. That's why I said
7 that those were the PLM.

8 But, in any event, the PLM ones are the pink
9 ones; right?

12:40:17 10 A. Yes, sir. That's correct.

11 Q. You talked about seeing some pretty large
12 bundles by PLM, did you not?

13 A. I did.

14 Q. What you didn't tell us was that Lee Poye
12:40:28 15 looked at some of those same samples by PLM and didn't
16 find any asbestos in them; right?

17 A. That's correct. But you can't compare the two.

18 MR. ASHBY: Your Honor, I'll move to strike the
19 last part.

12:40:47 20 MR. MAIMON: I object, Your Honor.

21 THE COURT: Overruled.

22 BY MR. ASHBY:

23 Q. So what you told us was those were some big,
24 obvious-looking bundles that you saw by PLM; right?

12:41:08 25 So you said -- I can't remember. You said they

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1 were like 300 to 1 aspect ratio, something like that;
2 right?

3 A. Not the bundles themselves. The individual
4 fibers in the bundles following the counting rules all
12:41:24 5 averaged 20 or 1 greater and some of them -- there were
6 so many individual fibers, we had one that got as high
7 as 300 to 1.

8 Q. Right. Okay. In any event, they were big,
9 though? There were some big microns like a hundred --
12:41:31 10 some of them are like a hundred microns or something;
11 right?

12 A. Hundred microns long. We had 70. Had some
13 higher than that, about 5 to 10 microns wide. But they
14 all were fibers.

12:41:44 15 Q. In any event, Lee Poye looked at some of the
16 same exact samples you did and didn't see any of those
17 big, obvious bundles, did he? He didn't report any
18 asbestos in the stuff he looked at; right?

19 A. No, he wouldn't because of the method he was
12:41:57 20 using compared to what we used.

21 Q. Well, he -- you used the ISO PLM method; right?

22 A. That's correct.

23 Q. Lee Poye also used the ISO PLM method; correct?

24 A. Correct. But it's still different on the
12:42:11 25 analysis we do. It has no resemblance to the average

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1 And then even further, Your Honor, the
 2 undisputed testimony, even putting that aside, was that
 3 by the time Terry Leavitt came to the United States at
 4 20 months old, she was no longer in diapers.
 14:07:46 5 So there is no testimony to support the basis
 6 of Dr. Longo's opinions with respect to the number of
 7 times that the diapering occurred. So, given that, I'm
 8 renewing my original objection and moving to strike his
 9 opinions regarding the number of diaperings.
 14:08:05 10 MS. CLANCY: She did say that she diapered her
 11 seven or more times per day. She did say that it was
 12 standard operating procedure. She said that it was a
 13 procedure her mother had taught her how to do, that she
 14 expected that her mother did it while she was gone,
 14:08:22 15 while she wasn't there in the Philippines with her.
 16 And so circumstantial evidence would be that
 17 this is a procedure her mom taught her how to do. It
 18 was standard operating procedure. She had every
 19 expectation that her mother continued to do it. There
 14:08:37 20 was no contrary evidence that her mother did not do it
 21 while she was in the Philippines.
 22 So we have both actual eyewitness evidence that
 23 she diapered her seven or more times a day prior to her
 24 leaving in September of 1967 and we have circumstantial
 14:08:49 25 evidence that this occurred through, I think, I want to

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1 say April or May of '68. And then she said she was
 2 just getting out of diapers in May of '68.
 3 So, if anything -- and Dr. Longo explained his
 4 math and said, what I was doing exactly was I was
 14:09:06 5 taking the number of times per day, multiplying it by
 6 the number of times in a year. So if it means,
 7 therefore, then, that you take two months out of it,
 8 that doesn't mean that you strike the whole testimony.
 9 That would just mean that the jury is entitled to do
 14:09:23 10 its own math and to say -- and they are entitled to
 11 argue you got the math wrong because it was only
 12 22 months that she was in diapers, and, therefore, he
 13 said she should have said 24 months. But he explained
 14 his whole math. He explained exactly what he was
 14:09:40 15 doing. That doesn't warrant striking testimony over
 16 that.
 17 MR. SATTERLEY: Your Honor, there's a CACI
 18 instruction that Your Honor gives on expert testimony
 19 that directly would apply to this.
 14:09:50 20 THE COURT: I think this goes to argument. He
 21 laid out his basis for doing it. I don't think that
 22 the -- I don't think his basis calls for a striking of
 23 his testimony. It all goes to the weight and the
 24 argument on it. I think he laid out what he did. I
 14:10:07 25 think there is -- arguably, the jury could find from a

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1 factual basis provided by Ms. Leavitt that the numbers
 2 are consistent with the kind of analysis that Dr. Longo
 3 did and the jury is perfectly capable of modifying.
 4 So the motion to strike is denied.
 14:10:22 5 MR. RICHMAN: Thank you, Your Honor.
 6 MS. CLANCY: They're probably more capable than
 7 any of us. The jury is so smart.
 8 THE COURT: We are taking a break here. So
 9 we're done. Have a good time, everybody.
 10
 11 (Whereupon, the proceedings
 12 were concluded at 2:10 p.m.)
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1 STATE OF CALIFORNIA)
 2) ss.
 3 COUNTY OF ALAMEDA)
 4
 5 I, EARLY K. LANGLEY, do hereby certify:
 6 That foregoing proceedings were held in the
 7 above-entitled action at the time and place therein
 8 specified;
 9 That said proceedings were taken before me at said
 10 time and place, and was taken down in shorthand by me,
 11 a Certified Shorthand Reporter of the State of
 12 California, and was thereafter transcribed into
 13 typewriting, and that the foregoing transcript
 14 constitutes a full, true and correct report of said
 15 proceedings that took place;
 16 IN WITNESS WHEREOF, I have hereunder subscribed my
 17 hand on February 14, 2019.
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EARLY K. LANGLEY, CSR No. 3537
 State of California